88-650

CASE NO.

FILED
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased, PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased, JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER,

Petitioners,

- vs -

BRENDA F. PLATT, as Personal Representative of the Estate of MICHAEL LEE PLATT, Deceased, and JANE DOE, as Personal Representative of the Estate of WILLIAM RUSSELL MATIX, Deceased,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS,
ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 et seq., excludes relief to the estates of the two murdered Special Agents of the Federal Bureau of Investigation and six wounded Special Agents of the Federal Bureau of Investigation who were shot by two organized criminals while the agents intercepted the criminals in the midst of a continuing series of robberies, extortions and attempted murders.

2. Whether the Eleventh Circuit Court of Appeals disregarded this Court's mandate to "broadly read" the Racketeer Influenced and Corrupt Organizations Act as required in Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985).

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STATUTES WHICH THE CASE INVOLVES

The statutes which the case involves is the Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. §§1961-1968.

The issues in this case focus primarily upon 18 U.S.C. §1964(c) which provides:

> (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States District Court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C. §1962(c) provides that:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. §1962(d) provides that:

> It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

18 U.S.C. §1961 sets forth definitions of terms utilized in the RICO chapter. The definition pertinent to this petition are set forth:

> As used in this chapter -
>
> (1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year...
>
> (2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;
>
> (3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;
>
> (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals

associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity... .

STATEMENT OF JURISDICTION

This Petition for Writ of Certiorari follows a judgment of the Eleventh Circuit Court of Appeals affirming dismissal of petitioners' civil complaint in the United States District Court for the Southern District of Florida. This Court has jurisdiction to consider this Petition for Writ of Certiorari pursuant to 28 U.S.C. §1254(1) and Rule 17.1(c), Supreme Court Rules.

Petitioners complaint was dismissed by the District Court (Alcee Hastings, United States District Court Judge) on November 13, 1986 for failing to state a cause of action (App. B). The District Court denied petitioners motion for reconsideration on March 23, 1987 (App. C).

The Eleventh Circuit affirmed the judgment of the District Court in a published opinion on January 15, 1988,

835 F.2d 844 (11th Cir. 1988). (App. D). Petitioners petition for rehearing was denied by the Eleventh Circuit Court of Appeals on July 15, 1988. (App. F).

STATEMENT OF THE CASE

1. Basis for Federal Jurisdiction in the Court of First Instance.

Jurisdiction in the United States District Court for the Southern District of Florida which was the court of first instance, was based upon 18 U.S.C. §1964(c) and the doctrine of pendent jurisdiction.

2. Course of Proceedings and Disposition in Court Below.

Following an April 11, 1986, shoot-out in Miami, Florida, which left two Federal Bureau of Investigation ("FBI") agents dead and five other agents wounded, the estates of the deceased agents and the surviving agents filed an eight count Complaint against the estates of Respondents, (who had expired at the conclusion of the shoot-out) charging violations of the federal civil Racketeering Influenced and Corrupt

Organizations Act, 18 U.S.C. §1961, et seq., ("RICO"), in Counts One and Two (substantive and conspiracy violations). Petitioners alleged violations relating to wrongful death, negligence, and assault and battery actions in Counts Three through Eight. Petitioners tracked the requisite statutory elements of a civil RICO violation, including the allegation that as a result of Respondents' violation of 18 U.S.C. §1962, Petitioners "have been injured in their business and property."

Respondent, Brenda F. Platt, as Personal Representative of the Estate of Michael Lee Platt, Deceased ("Platt"), filed an Answer to the Complaint. Respondent, Jane Doe, as Personal Representative of the Estate of William R. Matix, Deceased, filed a Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss, asserting that the

Complaint failed to state a cause of action under Civil RICO because personal injuries are not compensable under RICO.

On November 13, 1986, the District Court, Alcee Hastings, United States District Court Judge, entered an Order dismissing the Complaint on Counts One and Two, the RICO allegations, without prejudice to Petitioners' right to bring the remaining state law claims in the proper forum. Without addressing Petitioners assertions that the injuries suffered as a result of the predicate acts of murder and attempted murder were something other than personal injuries, Judge Hastings dismissed the Complaint on the basis that "personal injuries are clearly not injuries to business or property within the context of this statute."

On December 1, 1986, Petitioners filed a motion for reconsideration,

stating specifically Petitioners' business or property injury of permanent and temporary loss of employability and economic gain.

Matix filed a Response to Petitioners' Motion for Reconsideration asserting that Plaintiffs raised no new grounds which had not already been considered by the court.

On March 23, 1987, Judge Hastings' entered an Order denying Petitioners' Motion for Reconsideration. Petitioners appealed Judge Hastings orders to the Eleventh Circuit Court of Appeals.

The Court of Appeals, on January 15, 1988, affirmed Judge Hastings' dismissal order. Grogan v. Platt, 835 F.2d 844 (11th Cir. 1988).

On July 15, 1988, the Court of Appeals denied Petitioners' Petition for Rehearing and Suggestion for Rehearing En Banc.

STATEMENT OF THE FACTS

At a point sometime prior to April 11, 1986, and continuing until that date, Platt and Matix committed a series of armed robberies, extortions, assaults, batteries, attempted homicides, and attempted felony murders in Dade County in the Southern District of Florida. In order to apprehend and bring to justice the persons responsible for these crimes, Special Agents of the FBI initiated a criminal investigation.

Since information revealed that the pattern of criminal activity being investigated occurred in South Dade County on days and at times when large quantities of money were being delivered to or taken from particular locations, Special Agents of the FBI, including Plaintiffs Grogan, Dove, Hanlon, McNeill, Mireles, Manauzzi, Orrantia, and Risner participated in a canvassing and

surveillance of potential targets of the gang on Friday, April 11, 1986.

At approximately 9:25 a.m. on April 11, 1986, Agents Grogan and Dove observed two individuals subsequently identified as Matix and Platt in a black Chevrolet Monte Carlo with a license plate that matched the automobile and license tag owned by Jose Collazo, who approximately a month earlier had been shot and left for dead at a Dade County rockpit by two men matching the description of Platt and Matix. The two men, after attempting to murder Collazo, proceeded to steal his black Monte Carlo.

Approximately a week after the Collazo incident, two men wearing ski masks and gloves and carrying firearms robbed the Barnett Bank, a federally insured institution in Miami. The two men left the bank in Collazo's black Monte Carlo.

During the April 11, 1986 surveillance, Platt and Matix became aware that they were being followed and commenced evasive maneuvers. During this time, Platt was seen loading a firearm in the front seat of the Monte Carlo. Because the Special Agents feared that Platt and Matix would attempt to flee and expose individuals and property in the nearby heavily populated areas to serious danger, Grogan and Dove activated their police lights and sirens and tried to stop and arrest Platt and Matix. Following in pursuit were the other Plaintiffs, Hanlon, McNeill, Mireles, Manauzzi, Orrantia, and Risner.

A high-speed chase ensued until the black Monte Carlo was finally stopped at which time a gun battle erupted when Platt and Matix resisted arrest by the FBI Special Agents.

When the shooting ended, Special Agents Grogan and Dove were dead, Petitioners Hanlon, McNeill, Mireles, Manauzzi, and Orrantia were wounded.

Matix and Platt were shot and killed in the exchange of gunfire.

ARGUMENT

I

WHETHER THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. §1961 et seq., EXCLUDES RELIEF TO THE ESTATES OF TWO MURDERED SPECIAL AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION AND SIX WOUNDED SPECIAL AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION WHO WERE SHOT BY TWO ORGANIZED CRIMINALS WHILE THE AGENTS INTERCEPTED THE CRIMINALS IN THE MIDST OF A CONTINUING SERIES OF ROBBERIES, EXTORTIONS AND ATTEMPTED MURDERS

This Court has not yet determined the question of whether federal law enforcement agents who have been murdered and wounded by organized criminals in the midst of a series of robberies, extortions and attempted murders should be foreclosed from the remedies provided by the civil RICO statute as set forth in 18 U.S.C. §1964(c).

While the result of excluding murdered and wounded federal law enforcement agents from civil RICO relief might

initially appear untenable, a panel of the Eleventh Circuit Court of Appeals (per Circuit Judge Kravitch) concluded that murdered and wounded Special Agents of the F.B.I. should not be permitted to maintain a civil RICO cause of action since the agents had not been "injured in their business or property" as those terms were intended by Congress in the civil RICO remedy provisions of 18 U.S.C. §1964(c). Grogan v. Platt, 835 F.2d 844 (11th Cir. 1988). The Grogan decision affirmed the judgment of the United States District Court for the Southern District of Florida (per District Judge Hastings) dismissing Petitioners' complaint for failing to state a cause of action. The District Court concluded that:

> a plaintiff can only recover...if he has been injured in his business and property....To this date no court has found that physical injury or death

> is included in the term 'business or property.'
>
> Grogan v. Platt, 835 F.2d 844 (1988) citing Dist. Ct. Opinion November 13, 1986.

Petitioners submit that the exclusion of wounded and murdered federal agents from all RICO relief achieves a result totally divorced from the goal and intent of Congress. Additionally, the Eleventh Circuit's analysis of 18 U.S.C. §1964(c) employs a narrow and restrictive approach to the RICO statute which contravenes previous decisions of this Court.

The denial of civil RICO relief to victims of murder and attempted murder is an important question of federal law since such a holding essentially emasculates the purpose of RICO to provide a valuable weapon in the fight against organized crime. If this Court determines that Congress did not intend to provide any relief to these crime victims

Congress will then be required to promulgate additional legislation.

The Racketeer Influenced and Corrupt Organizations Act (RICO), Pub.L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U.S.C. §§1961-1968 allows a private civil action to recover damages for injury to business or property caused "by reason of a violation of" its substantive provisions. 18 U.S.C. §1964(c). The focus of "RICO" is toward "racketeering activity" which the Act defines as including

> "(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion...which is chargeable under State law and punishable by imprisonment for more than one year. 18 U.S.C. 1961(1).

The "declared purpose" of Congress in enacting the RICO statute was "to seek the eradication of organized crime in the United States." United States v. Turkette, 452 U.S. 576, 589 (1981)(quoting the statement of findings prefacing the

Organized Crime Control Act of 1970, Pub.L. 91-452, 84 Stat. 983).

Congress provided direction for application of RICO provisions:

> RICO is to be liberally construed to effectuate its remedial purposes.

Pub.L. 91-452, §904(a) 84 Stat. 947. In Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 482, 498, (1985) this Court concluded that RICO remedial purposes

> are nowhere more evidence than in the provision of a private action for those injured by racketeering activity.

It would be difficult to provide a more explicit scenario to effectuate the remedial purposes of RICO than to permit federal law enforcement agents to maintain a cause of action against organized criminals who have murdered and wounded the agents. Even the Grogan panel recognized the remedial value of Petitioners' claim:

> We are sympathetic to appellants argument that permitting recovery in this case would deter the kind of activity that RICO was designed to prevent.

835 F.2d at 848.

Despite "sympathizing" with Petitioners argument, the Eleventh Circuit concluded that Congress did not intend the language of the RICO statute to provide any relief for the murdered and wounded agents.

The pertinent RICO provision is set forth in 18 U.S.C. §1964(c):

> any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

RICO does not provide a definition of "injury" to "business" or "property."

In United States v. Apfelbaum, 445 U.S. 115, 121 (1980) this Court restated the recognized rule of statutory

construction that "absent clear evidence of a contrary legislative intention, a statute should be interpreted according to its plain language."

The two operative words requiring analysis are "business" and "property." "Property" is commonly defined as "something that is or may be owned or possessed: wealth, goods....something to which a person has legal title." Webster's Third New International Dictionary, 1818 (1986). "Business" is commonly defined as "a particular field of endeavor." Webster's Ninth New Collegiate Dictionary, 190 (1983). With these definitions it takes little analysis to discern how federal law enforcement agents who are murder and attempted murder victims are injured not only in terms of their "property" but also their "business." To say that killed or wounded F.B.I. special agents have no

effect upon their ability to possess, acquire, maintain, transfer, bequeath, devise or control something that may be owned is unjustified. See Von Bulow v. Von Bulow, 634 F. Supp. 1284, 1309 (S.D.N.Y. 1986).

Further, F.B.I. Special Agents have chosen the profession of law enforcement as their "business." Each of these petitioners maintained certain career goals, opportunities and achievements which were obviously not left unblemished by the April 11, 1986 bullets.

In addition to the plain meaning of the terms "property" or "business" analagous statutes provide assistance. The terms "business" or "property" are included in section 4 of the Clayton Act which provides that:

> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue....

15 U.S.C. §15.

In Reiter v. Sonotone, 442 U.S. 340 (1979) this Court reviewed the intent of Congress in including the term "property" in the Clayton Act and determined that a consumer who suffered loss of money due to an antitrust violation had been injured in his property. This Court in reaching its conclusion examined the language of the Act as well as the intent and purpose of the Act.

Under the Clayton Act, the courts have recognized that the term "business" must be given a broad reading to accomplish the Act's objectives. Quinonez v. National Assoc. of Securities Dealers, Inc., 380 F.2d 484, 486 (5th Cir. 1967). In Quinonez, the Fifth Circuit reversed the lower court's dismissal of the Plaintiff's complaint on the issue of whether a plaintiff's loss of opportunity to work is a sufficient injury to one's business or property to entitle him to

the private treble damage remedy under the Clayton Act. Relying upon the rationale of the Seventh Circuit in Nicholas v. Spencer International Press, Inc., 371 F.2d 332 (7th Cir. 1967), the Fifth Circuit established the loss of the opportunity to perform work is an injury contemplated by the "injury to business" language of the act:

> Addressing the second contention first, we readily conclude that one who has been damaged by loss of employment as a result of a violation of the antitrust laws is "injured in his business or property" and thus entitled to recovery under 15 U.S.C. §15. Work as the employee of another is not, indeed, an independent business enterprise, and an opportunity to perform such work may not be property in the ordinary sense, but the interest invaded by a wrongful act resulting in loss of employment is so closely akin to the interest invaded by impairment of one's business as to be indistinguishable in this context. (Footnotes omitted).

Id. at 830. See also, Roseland v. Phister Mfg. Co., 125 F.2d 417, 419 (7th

Cir. 1942); McNulty v. Borden, Inc., 474 F.Supp. 1111 (E.D.Pa. 1979); DeGregorio v. Segal, 443 F.Supp. 1257, 1261 (E.D.Pa. 1978).

Thus, whether examining the purpose of RICO, its plain language or analogous statutes Petitioners submit that they properly stated a RICO cause of action which if proved, would entitle them to relief.

II

WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS DISREGARDED THIS COURT'S MANDATE TO "BROADLY READ" THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT AS REQUIRED IN SEDIMA, S.P.R.L. V. IMREX CO., 473 U.S. 479, 496 (1985)

In Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479 (1985) this Court unequivocably set forth the method which courts should interpret the RICO statute:

> RICO is to be read broadly. This is the lesson not only of Congress' self consciously

> expansive language and overall approach, see United States v. Turkette, 452 U.S. 576, 586-587 (1981), but also of its express admonition that RICO is to be 'liberally construed to effectuate its remedial purposes', Pub.L. 91-452 §904(a), 84 Stat. 947. The statute's 'remedial purposes' are nowhere more evident than in the provision of a private action for those injured by racketeering activity.

473 U.S. at 497-498. (Emphasis added).

Additionally, Sedima advocates the use of RICO to aggressively fight crime:

> RICO was an aggressive initiative to supplement old remedies and develop new methods for fighting crime. See generally Russello v. United States, 464 U.S. 16, 26-29, (1983). While few of the legislative statements about novel remedies and attacking crime on all fronts, see ibid., were made with direct reference to §1964(c), it is in this spirit that all of the Act's provisions should be read. The specific references to §1964(c) are consistent with this overall approach. Those supporting §1964(c) hoped it would "enhance the effectiveness of title IX's prohibitions," House hearings, at 520, and provide "a major new tool," 116

> Cong.Rec. 35227; 115 Cong.Rec. 6993-6994 (1969).

473 U.S. at 498.

In Sedima this Court addressed the concerns of lower courts that RICO provisions would be expanded for purposes beyond the scope that Congress had initially contemplated. Sedima rejected attempts to restrict RICO by means of narrow and restrictive analysis as well as the judicial creation of statutory amendments which improperly added requirements not included in RICO by Congress. The pronouncement of Sedima is unequivocal. The Eleventh Circuit's decision in Grogan fails to follow Sedima's doctrine that

> [w]here the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of the enterprise. Those acts are, when committed

> in the circumstances delineated in §1962(c) "an activity which RICO was designed to deter." Any recoverable damages occurring by reason of a violation of §1962(c) will flow from the commission of the predicate acts.

Sedima, 473 U.S. at 397.

The Eleventh Circuit's opinion in Grogan fails to follow this Court's admonition in Sedima. The rejection of Petitioners RICO claims by the Eleventh Circuit conflicts with this Courts decisions in Sedima and United States v. Turkette, 452 U.S. 576 (1981) and illustrates a new attempt by the lower courts to judicially amend the RICO statute.

The Eleventh Circuit's conclusion in Grogan that RICO protection does not apply to injuries to a person's business or property which result from personal injuries caused by commission of RICO predicate acts is directly antagnostic to Sedima. Obviously the Eleventh Circuit was concerned with RICO being utilized as

a vehicle to thrust traditional "personal injury" cases into federal court. However, the concern of the Eleventh Circuit fails to recognize that Congress included the offenses of murder and attempted murder in its list of predicate act offenses which would give rise to a RICO cause of action. See 18 U.S.C. §1961(a). It is illogical to conclude that Congress intended to exclude from relief injuries to business or property flowing from a victim's murder or attempted murder when these offenses were part of a pattern of racketeering activity. It is additionally illogical to suggest that allowing the relief in Grogan would open the floodgates of personal injury cases into federal courts. Obviously the crimes of murder and attempted murder are outside the scope of traditional personal injury causes of actions.

This Court in Sedima was faced with the question of the expansion of RICO into areas not expressly contemplated by Congress. This Court recognized that RICO was not being utilized as originally intended

> it is true that private civil actions under the statute are being brought almost solely against such defendants, rather than against the archetypal, intimidating mobster.

Sedima, 473 U.S. at 499.

Unlike Sedima, Petitioners' cause of action presents the scenario of the intimidating mobsters trying to murder law enforcement agents who are seeking to terminate a pattern of violent criminal activity. To say that RICO offers no relief for any of the injuries sustained by the law enforcement agents to their property and business as the result of the mobsters conduct, shrinks RICO from the aggressive tool to fight crime intended by Congress.

CONCLUSION

Wherefore, based upon the foregoing authority, Petitioners respectfully request that the Honorable Court accept jurisdiction over this matter, grant this Petition for Writ of Certiorari, address the questions presented herein, and reverse the judgment of the Eleventh Circuit Court of Appeals affirming dismissal of Petitioners Complaint.

Respectfully submitted,

Bruce A. Zimet

BRUCE A. ZIMET, ESQUIRE

APPENDICES

See the record excerpt provided on appeal from the U.S. District Court for copies of pleadings filed there.

COMPLAINT. . . . . App. A

ORDER OF THE UNITED STATES DISTRICT COURT GRANTING DEFENDANT MATIX' MOTION TO DISMISS WITHOUT PREJUDICE. . App. B

ORDER OF THE UNITED STATES DISTRICT COURT DENYING MOTION FOR RECONSIDERATION . App. C

OPINION OF THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT, JANUARY 15, 1988. . App. D

JUDGMENT OF THE UNITED
STATES COURT OF APPEALS,
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ORDER OF THE UNITED STATES
COURT OF APPEALS, ELEVENTH
CIRCUIT, DENYING PETITIONERS
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SUGGESTION FOR REHEARING EN
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been mailed, postage prepaid, this 13th day of October, 1988, to Ronald P. Ponzoli, Esquire, 302 Roland/Continental Plaza, 3250 Mary Street, Miami, Florida 33133, and Carolina A. Echarte, Esquire, Buchbinder & Elegant, PA, Commonwealth Building, 4th Floor, 46 Southwest First Street, Miami, Florida 33130.

Bruce A. Zimet

BRUCE A. ZIMET, ESQUIRE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-1124-Civ-HASTINGS

SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased,	
PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased,	
JOHN F. HANLON, JR.,	
GORDON G. McNEILL,	COMPLAINT
EDMUNDO MIRELES, JR.,	
RICHARD A. MANAUZZI,	
GILBERT M. ORRANTIA, and	
RONALD G. RISNER,	
Plaintiffs,	
- vs -	
BRENDA F. PLATT, as Personal Representative of the Estate of MICHAEL LEE PLATT, Deceased, and	
JANE DOE, as Personal Representative of the Estate of WILLIAM RUSSELL MATIX, Deceased,	
Defendants.	

JURY TRIAL DEMANDED

SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased; PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased; JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER, Plaintiffs, sue BRENDA F. PLATT as Personal Representative of the Estate of MICHAEL LEE PLATT, Deceased and JANE DOE, Personal Representative of the Estate of WILLIAM RUSSELL MATIX, Deceased, Defendants, and allege the following:

JURISDICTION AND VENUE

1. This is an action predicated upon the provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO") 18 U.S.C. §1961 et seq. (Counts I and II), and principles of state and common law (Counts III through VIII).

2. Jurisdiction of this Court arises under 18 U.S.C. §1964 and the doctrine of pendent jurisdiction.

3. Venue lies in this District under the provisions of 18 U.S.C. §1965 and 28 U.S.C. §1391.

THE PARTIES

4. At all times material to this Complaint, SANDRA S. GROGAN is the surviving spouse of the decedent BENJAMIN GROGAN.

5. At all times material to this Complaint, Plaintiff, SANDRA S. GROGAN, in her representative capacity, is the lawful Personal Representative of the Estate of BENJAMIN GROGAN ("GROGAN").

6. At all times material to this Complaint, PATRICIA A. DOVE is a surviving parent of the decedent JERRY DOVE, and is a survivor of the Estate of JERRY DOVE.

7. At all times material to this Complaint, Plaintiff, PATRICIA A. DOVE, in her representative capacity, is the lawful Personal Representative of the Estate of JERRY DOVE ("DOVE").

8. At all times relevant to this Complaint, Plaintiff, JOHN F. HANLON, JR. ("HANLON"), was a resident of Broward County, Florida, and employed as a Special Agent of the Federal Bureau of Investigation.

9. At all times relevant to this Complaint, Plaintiff, GORDON G. McNEILL ("McNEILL"), was a resident of Dade County, Florida, and employed as a Special Agent of the Federal Bureau of Investigation.

10. At all times relevant to this Complaint, Plaintiff, EDMUNDO MIRELES, JR. ("MIRELES"), was a resident of Dade County, Florida, and employed as a Special Agent of the Federal Bureau of Investigation.

11. At all times relevant to this Complaint, Plaintiff, RICHARD A. MANAUZZI ("MANAUZZI"), was a resident of Broward County, Florida, and employed as a Special Agent of the Federal Bureau of Investigation.

12. At all times relevant to this Complaint, Plaintiff, GILBERT M. ORRANTIA ("ORRANTIA"), was a resident of Broward County, Florida, and employed as a Special Agent of the Federal Bureau of Investigation.

13. At all times relevant to this Complaint, Plaintiff, RONALD G. RISNER ("RISNER"), was a resident of Broward County, Florida, and employed as a Special Agent of the Federal Bureau of Investigation.

14. At all times relevant to this Complaint, MICHAEL LEE PLATT was a resident of Dade County, Florida, until his death on April 11, 1986, at Miami, Florida. On or about April 22, 1986,

BRENDA F. PLATT (wife of MICHAEL LEE PLATT) was ordered to act as the Personal Representative of the Estate of MICHAEL LEE PLATT ("Defendant PLATT").

15. At all times relevant to this Complaint, WILLIAM RUSSELL MATIX was a resident of Dade County, Florida, until his death on April 11, 1986, at Miami, Florida. On April 21, 1986, ELAINE M. FASONE, sister of WILLIAM RUSSELL MATIX, made application to the Circuit Court for Dade County to be appointed Personal Representative of the Estate of WILLIAM RUSSELL MATIX. As of the date of the filing of this Complaint, ELAINE M. FASONE has not yet been ordered to act as Personal Representative, therefore, "JANE DOE" is set forth as Personal Representative ("Defendant MATIX").,

FACTUAL STATEMENT

16. From an unknown date prior to on or about April 11, 1986, and continuing

until on or about April 11, 1986, at Dade County in the Southern District of Florida, MICHAEL LEE PLATT ("PLATT") and WILLIAM RUSSELL MATIX ("MATIX") engaged in a series of armed robberies, extortions, assaults, batteries, homicides, attempted homicides and felony murders in violation of various particular state (Florida) and federal statutes.

17. That due to the continuing episodes of wanton criminal conduct, Special Agents of the Federal Bureau of Investigation commenced an investigation in order to apprehend and bring to justice those persons responsible for this rash of criminal conduct.

18. That on or about Friday, April 11, 1986, Special Agents of the Federal Bureau of Investigation, including Plaintiffs GROGAN, DOVE, HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA and RISNER participated in a canvasing and surveillance of potential targets of the

criminal gang.

19. That the Special Agents were conducting their canvasing and surveillance on a Friday since the pattern of criminal activity being investigated occurred on days and at times in which large quantities of money were being delivered to or taken from particular locations. That the surveillance concentrated in the South Dade area because several of the crimes described in Paragraph 16, supra, had occurred in that specific area.

20. That on or about April 11, 1986, at approximately 9:25 a.m., Plaintiffs GROGAN and DOVE observed two individuals subsequently identified as PLATT AND MATIX in a black Chevrolet Monte Carlo automobile bearing Florida license plate number "NTJ-891." The black Monte Carlo was being driven by MATIX with PLATT as passenger.

21. The black Monte Carlo and license tag matched the automobile and license tag owned by Jose Collazo. Jose Collazo had been shot and left for dead by two men matching the description of PLATT and MATIX at a Dade County rock pit on or about March 12, 1986. That these two men, after having attempting to murder Jose Collazo, proceeded to steal Collazo's Monte Carlo.

22. On or about March 19, 1986, at the Barnett Bank located at 13593 South Dixie Highway, Miami, Florida, in the Southern District of Florida, two men wearing ski masks and gloves and bearing firearms robbed said Bank whose proceeds were then insured by the Federal Deposit Insurance Corporation of approximately $8,338.00 in United States currency. The two men who committed this robbery left the Bank in the Collazo black Monte Carlo with license tag number "NTJ-891," which

had been stolen from Jose Collazo on March 12, 1986.

23. On or about April 11, 1986, when Plaintiffs GROGAN and DOVE had first observed the black Monte Carlo travelling in Dade County, Florida, an attempt was made to surveil said automobile. PLATT and MATIX observed the surveillance of the Special Agents and attempted to evade the surveillance. During this time, PLATT was observed attempting to load a firearm in the front seat of the Monte Carlo.

24. That the Special Agents were concerned that PLATT and MATIX would further attempt to flee and expose individuals and property in nearby heavily populated areas to potential danger and injury.

25. That Special Agents GROGAN and DOVE with police light and siren activated, as well as Plaintiffs, HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA and

RISNER attempted to contain, stop and arrest PLATT and MATIX.

26. That PLATT and MATIX attempted to avoid and resist the lawful actions of the Plaintiffs.

27. That the black Monte Carlo was finally stopped on S.W. 82nd Avenue in Dade County, Florida, at which time PLATT and MATIX, utilizing firearms, further attempted to resist the FBI Special Agents in their attempt to lawfully arrest PLATT and MATIX.

28. That as a result of the shooting and attempt to resist lawful arrest commenced by PLATT and MATIX, Plaintiffs GROGAN and DOVE were killed, Plaintiffs HANLON, McNEILL, MIRELES, MANAUZZI and ORRANTIA were injured with gunshot wounds, while Plaintiff RISNER was the target of gunshots.

COUNT I

Racketeer Influenced and
Corrupt Organizations Act
(PLATT - MATIX)

29. Paragraphs one through twenty-eight inclusive of this Complaint are realleged and incorporated herein as though fully set forth.

30. This Count is an action based upon the provisions of 18 U.S.C. §1961 et seq., Civil RICO, against Defendants PLATT and MATIX and on behalf of Plaintiffs SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased; PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased; JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER,

31. That from an unknown time prior to on or about April 11, 1986, and continuing until on or about April 11, 1986, PLATT and MATIX, at Dade County, in the Southern District of Florida and elsewhere, did knowingly and intentionally associate themselves with

an enterprise which affected interstate commerce and did knowingly and intentionally directly and indirectly conduct and participate in the conduct of such enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. §1962 and §2.

32. That WILLIAM RUSSELL MATIX and MICHAEL LEE PLATT were members of an "enterprise" as that term is defined in 18 U.S.C. §1961(4) as "any individual . . . or group of individuals associated in fact although not a legal entity." That the enterprise PLATT and MATIX were members of was formed for the purpose of and did operate by robbing monies and properties from others.

33. That the activities of the enterprise affected interstate commerce in that the robberies were made of institutions, entities and persons who were and are engaged in interstate commerce. Additionally, said robberies

and crimes were investigated by the Federal Bureau of Investigation which was engaged in interstate commerce.

34. That 18 U.S.C. §1961(5) defines a pattern of racketeering activity as "requir[ing] at least two acts of racketeering activity . . . ." as defined in 18 U.S.C. §1961(1).

35. That PLATT and MATIX participated in the conduct of the enterprises affairs by participating in at least the following pattern of racketeering activity:

(a) That on or about April 11, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §782.04 (First Degree Murder) by unlawfully, feloniously, knowingly, deliberately, intentionally and with a premeditated design

and crimes were investigated by the Federal Bureau of Investigation which was engaged in interstate commerce.

34. That 18 U.S.C. §1961(5) defines a pattern of racketeering activity as "requir[ing] at least two acts of racketeering activity . . . ." as defined in 18 U.S.C. §1961(1).

35. That PLATT and MATIX participated in the conduct of the enterprises affairs by participating in at least the following pattern of racketeering activity:

(a) That on or about April 11, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §782.04 (First Degree Murder) by unlawfully, feloniously, knowingly, deliberately, intentionally and with a premeditated design

to effect the death of a human being, kill a human being, to wit: BENJAMIN GROGAN, a Special Agent of the Federal Bureau of Investigation.

(b) That on or about April 11, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §782.04 (First Degree Murder) by unlawfully, feloniously, knowingly, deliberately, intentionally and with a premeditated design to effect the death of a human being, kill a human being, to wit: JERRY DOVE, a Special Agent of the Federal Bureau of Investigation.

(c) That on or about April 11, 1986, at Dade County, Florida, PLATT and

MATIX did knowingly and intentionally violate Florida Statute §777.04 (Conspiracy) by conspiring to unlawfully, feloniously, knowingly, deliberately, intentionally, and with a premeditated design to effect the death of human beings, conspire to kill human beings, to wit: BENJAMIN GROGAN, JERRY DOVE, JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER, in violation of Florida Statutes §782.04 (First Degree Murder).

(d) That on or about April 11, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida

Statute §777.04(1) and §782.04 (Attempted First Degree Murder) by knowingly, unlawfully, intentionally, and with a premeditated design to effect the death of a human being, attempt to kill a human being, to wit: Plaintiff, JOHN F. HANLON, JR., a Special Agent of the Federal Bureau of Investigation.

(e) That on or about April 11, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §777.04(1) and §782.04 (Attempted First Degree Murder) by knowingly, unlawfully, intentionally, and with a premeditated design to effect the death of a human being, attempt to kill a human

being, to wit: Plaintiff, GORDON G. McNEILL, a Special Agent of the Federal Bureau of Investigation.

(f) That on or about April 11, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §777.04(1) and §782.04 (Attempted First Degree Murder) by knowingly, unlawfully, intentionally, and with a premeditated design to effect the death of a human being, attempt to kill a human being, to wit: Plaintiff, EDMUNDO MIRELES, JR., a Special Agent of the Federal Bureau of Investigation.

(g) That on or about April 11, 1986, at Dade County, Florida, PLATT and

MATIX did knowingly and intentionally violate Florida Statute §777.04(1) and §782.04 (Attempted First Degree Murder) by knowingly, unlawfully, intentionally, and with a premeditated design to effect the death of a human being, attempt to kill a human being, to wit: Plaintiff, RICHARD A. MANAUZZI, a Special Agent of the Federal Bureau of Investigation.

(h) That on or about April 11, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §777.04(1) and §782.04 (Attempted First Degree Murder) by knowingly, unlawfully, intentionally, and with a premeditated design to

effect the death of a human being, attempt to kill a human being, to wit: Plaintiff, GILBERT M. ORRANTIA, a Special Agent of the Federal Bureau of Investigation.

(i) That on or about April 11, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §777.04(1) and §782.04 (Attempted First Degree Murder) by knowingly, unlawfully, intentionally, and with a premeditated design to effect the death of a human being, attempt to kill a human being, to wit: Plaintiff, RONALD G. RISNER, a Special Agent of the Federal Bureau of Investigation.

(j) That on or about March 12, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §777.04(1) and §782.04 (Attempted First Degree Murder) by knowingly, unlawfully, intentionally, and with a premeditated design to effect the death of a human being, attempt to kill a human being, to wit: Jose Collazo.

(k) That on or about March 12, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §812.13 by robbing from Jose Collazo a black Monte Carlo motor vehicle owned by Jose Collazo.

(l) That on or about March 12, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §812.13 by robbing from Jose Collazo a firearm.

(m) That on or about March 19, 1986, at Dade County, Florida, PLATT and MATIX did knowingly and intentionally violate Florida Statute §812.13 by robbing the Barnett Bank of approximately $8,336.00 in United States Currency.

(n) That on or about January 10, 1986, at Dade County, Florida, PLATT and MATIX did violate Florida Statute §812.13 by robbing a Brinks Armored Car Company vehicle as it attempted to

deliver in excess of $50,000 to the Barnett Bank, 13593 South Dixie Highway. (o) That during the course of said January 10, 1986, robbery, PLATT and MATIX did knowingly, unlawfully and with a premeditated design to effect the death of a human being, shoot and attempt to kill Ernesto Maranje, a Brinks employee in violation of Florida Statute §777.04(1) and §782.04 (Attempted First Degree Murder).

36. That as a result of the Defendants' violation of 18 U.S.C. §1962, the Plaintiffs SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased; PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased; JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO

MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER, have been injured in their business and property.

WHEREFORE, Plaintiffs pray for judgment against Defendants PLATT and MATIX as follows:

(1) An award of threefold the damages suffered by each individual Plaintiff, in an amount not yet ascertained but not less than $1,000,000 as to each Plaintiff.

(2) An award of the costs of this suit including reasonable attorney's fees and any other associated costs.

(3) An accounting of any and all monies and property owned by or claimed by MICHAEL LEE PLATT and WILLIAM RUSSELL MATIX as well as the Estates of PLATT and MATIX.

(4) Such other relief as may be deemed appropriate.

COUNT II

Conspiracy to Violate Racketeer Influenced And Corrupt Organizations Act
(PLATT - MATIX)

37. Paragraphs one through thirty-six of this Complaint are realleged and incorporated herein as though fully set forth.

38. This Count is an action based upon the provisions of 18 U.S.C. §1961 et seq., Civil RICO, against PLATT and MATIX and on behalf of Plaintiffs SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased; PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased; JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER,

39. That from an unknown time prior to April 11, 1986, and continuing until on or about April 11, 1986, at Dade County, Florida, and elsewhere, PLATT and MATIX, did knowingly, wilfully, and intentionally, conspire to violate 18 U.S.C. §1962(c), to wit: to associate with an enterprise whose activities affected interstate commerce and to conduct and participate directly and indirectly in the conduct of said enterprises affairs through a pattern of racketeering activity. All in violation of 18 U.S.C. §1962(d).

40. That as a result of PLATT and MATIX's conspiring to violate 18 U.S.C. §1962(c), Plaintiffs SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased; PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased; JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI,

GILBERT M. ORRANTIA, and RONALD G. RISNER, have been injured in their business and property.

WHEREFORE, Plaintiffs pray for judgment against Defendants PLATT and MATIX as follows:

(1) An award of threefold the damages suffered by each individual Plaintiff, in an amount not yet ascertained but not less than $1,000,000 as to each Plaintiff.

(2) An award of the costs of this suit including reasonable attorney's fees and any other associated costs.

(3) An accounting of any and all monies and property owned by or claimed by MICHAEL LEE PLATT, WILLIAM RUSSELL MATIX or by Defendant PLATT and Defendant MATIX.

(4) Such other relief as may be deemed appropriate.

COUNT III

Wrongful Death of BENJAMIN GROGAN
(PLATT - MATIX)

41. That Paragraphs one through five and fourteen through twenty-eight of this Complaint are realleged and incorporated herein as though fully set forth.

42. This Count is an action for wrongful death based upon the intentional shooting and killing of BENJAMIN GROGAN.

43. This Count is an action for damages in excess of Five Thousand Dollars.

44. This Count is brought by SANDRA S. GROGAN in her capacity as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased, and the Survivor thereof.

45. The decedent, upon his death, left surviving the following: SANDRA S. GROGAN, his wife.

46. The Estate of BENJAMIN GROGAN is being probated in the Circuit Court in and for Dade County.

47. At the time of his death, BENJAMIN GROGAN was 53 years of age having been born on February 26, 1933.

48. At all times material hereto the decedent BENJAMIN GROGAN was a resident of Dade County, State of Florida.

49. That the intentional shooting complained of occurred on April 11, 1986, at approximately 9:30 a.m. in Dade County, Florida.

50. That PLATT and MATIX were riding in a stolen black Monte Carlo automobile on April 11, 1986, when approached by FBI Special Agents including BENJAMIN GROGAN, who were attempting to lawfully arrest PLATT and MATIX.

51. That PLATT and MATIX responded to the FBI Special Agents by opening gunshot fire against the Special Agents.

52. That PLATT knowingly and intentionally fired a firearm at BENJAMIN GROGAN intending to cause the death of BENJAMIN GROGAN. Said firings caused projectiles to enter the body of BENJAMIN GROGAN and kill BENJAMIN GROGAN.

53. That while PLATT had an opportunity to clandestinely approach BENJAMIN GROGAN and fire the fatal shots, WILLIAM MATIX was engaged in a shoot-out with FBI Special Agents.

54. That the activities of MATIX allowed PLATT to clandestinely approach and kill BENJAMIN GROGAN.

55. That as a direct and proximate result of this intentional conduct of the MATIX and PLATT, the Decedent, BENJAMIN GROGAN was killed.

56. The Decedent, BENJAMIN GROGAN, died on April 11, 1986.

57. That as a further direct and proximate result of the intentional conduct of PLATT and MATIX, SANDRA S.

GROGAN, as surviving spouse and Personal Representative of the Estate of BENJAMIN GROGAN, has suffered the following injuries and is entitled to the following damages pursuant to Florida Statute 768.21:

(a) The loss of future support and services since the death of BENJAMIN GROGAN.

(b) The loss of BENJAMIN GROGAN's companionship and protection.

(c) The mental pain and suffering of SANDRA S. GROGAN since April 11, 1986.

(d) The loss of the prospective net accumulations of the Estate of BENJAMIN GROGAN.

WHEREFORE, SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased, demands judgment against the Defendants PLATT and

MATIX for damages together with interest, costs and trial by jury of all issues triable as of right by jury.

COUNT IV

Wrongful Death of JERRY DOVE
(PLATT - MATIX)

58. That Paragraphs one through three, six, seven and fourteen through twenty-eight of this Complaint are realleged and incorporated herein as though fully set forth.

59. This Count is an action for wrongful death based upon the intentional shooting and killing of JERRY DOVE.

60. This Count is an action for damages in excess of Five Thousand Dollars.

61. This Count is brought by PATRICIA A. DOVE in her capacity as Personal Representative of the Estate of JERRY DOVE, Deceased, and the Survivors thereof.

62. The decedent, upon his death, left surviving the following: PATRICIA A. DOVE, his mother.

63. The Estate of JERRY DOVE is being probated in the Circuit Court in and for Dade County.

64. At the time of his death, JERRY DOVE was 30 years of age having been born on January 19, 1956.

65. At all times material hereto the decedent JERRY DOVE was a resident of Dade County, State of Florida.

66. That the intentional shooting complained of occurred on April 11, 1986, at approximately 9:30 a.m. in Dade County, Florida.

67. That PLATT and MATIX were riding in a stolen black Monte Carlo automobile on April 11, 1986, when approached by FBI Special Agents including JERRY DOVE, who were attempting to lawfully arrest MICHAEL LEE PLATT and WILLIAM RUSSELL MATIX.

68. That PLATT and MATIX responded to the FBI Special Agents by opening gunshot fire against the Special Agents.

69. That PLATT knowingly and intentionally fired a firearm at JERRY DOVE intending to cause the death of JERRY DOVE. Said firings caused projectiles to enter the body of JERRY DOVE and kill JERRY DOVE.

70. That while PLATT had an opportunity to clandestinely approach JERRY DOVE and fire the fatal shots, MATIX was engaged in a shoot-out with FBI Special Agents.

71. That the activities of MATIX allowed PLATT to clandestinely approach and kill JERRY DOVE.

72. That as a direct and proximate result of this intentional conduct of MATIX and PLATT, the Decedent, JERRY DOVE was killed.

73. The Decedent, JERRY DOVE, died on April 11, 1986. 74. That as a further

direct and proximate result of the intentional conduct of PLATT and MATIX, PATRICIA A. DOVE, as surviving mother and Personal Representative of the Estate of JERRY DOVE, has suffered the following injuries and is entitled to the following damages pursuant to Florida Statute 768.21:

(a) The loss of future support and services since the death of JERRY DOVE.

(b) The loss of the prospective net accumulations of the estate of JERRY DOVE.

(c) The mental pain and suffering of PATRICIA A. DOVE since April 11, 1986.

WHEREFORE, PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased, demands judgment against the Defendants PLATT and MATIX for damages together with interest, costs

and trial by jury of all issues triable as of right by jury.

COUNT V

Negligence of WILLIAM RUSSELL MATIX Resulting In Wrongful Death of Benjamin Grogan

(MATIX)

75. This is an action for wrongful death of BENJAMIN GROGAN due to the negligence of MATIX and is brought forth by Plaintiff SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased, and is in an amount in excess of $5,000.

76. That Paragraphs one through five, fourteen and fifteen of this Complaint are realleged and incorporated herein as though fully set forth.

77. That on or about April 11, 1986, MATIX was operating a stolen black Monte Carlo automobile in Dade County, Florida. That PLATT was a passenger in said automobile and carrying various firearms.

78. That at approximately 9:30 a.m., WILLIAM RUSSELL MATIX observed an unmarked FBI automobile with a flashing light and siren attempting to stop the Monte Carlo MATIX was driving.

79. That MATIX refused to stop the Monte Carlo voluntarily. While MATIX drove his automobile, PLATT was in the process of loading a firearm.

80. That once the automobile Defendant MATIX was driving was stopped by Special Agents of the Federal Bureau of Investigation, MICHAEL LEE PLATT proceeded to utilize a firearm to shoot and kill Special Agent BENJAMIN GROGAN of the FBI.

81. That MATIX owed a duty to the decedent and other members of the public to exercise reasonable care in the use and operation of the automobile he was driving. Additionally, MATIX, knowing the propensity for violence of PLATT, owed a duty to exercise reasonable care

to the decedent and others to segregate and separate MICHAEL LEE PLATT and the weapons carried by PLATT from any and all locations and any and all situations in which PLATT might attempt to use said weapons against another human being. MATIX further had a duty to notify law enforcement authorities of the crimes committed by PLATT, PLATT's location, and PLATT's plans to commit further crimes.

82. That at all times material to this Complaint, MATIX was negligent and careless and breached the previously described duties as follows:

(a) by negligently allowing Defendant MICHAEL LEE PLATT to travel with him in an automobile while Defendant MICHAEL LEE PLATT was fully armed;

(b) by not notifying law enforcement officials of the

presence of MICHAEL LEE PLATT and his arsenal of weapons;

(c) by failing to stop when confronted by law enforcement authorities; and

(d) by allowing MICHAEL LEE PLATT to be driven to a location in which a confrontation with other persons would be likely and injury would likely occur.

83. As a direct, proximate and foreseeable result of the above alleged negligence, the wrongful death of BENJAMIN GROGAN occurred when MICHAEL LEE PLATT utilized the firearms he carried in the automobile operated by WILLIAM RUSSELL MATIX to inflict the fatal wounds which caused the death of BENJAMIN GROGAN.

84. As a direct, proximate and foreseeable result of the above-described

negligence which resulted in the death of BENJAMIN GROGAN, the Plaintiff, SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased, makes the following claims:

(A) The estate of BENJAMIN GROGAN:

1. Loss of the prospective net accumulations of the estate; and

2. Funeral expenses of the decedent BENJAMIN GROGAN's death.

(B) SANDRA S. GROGAN, surviving spouse:

1. Mental pain and suffering from the date of death into the future;

2. Loss of the Decedent, BENJAMIN GROGAN's companionship and protection; and

3. Future loss of support and services from the date of death into the future.

WHEREFORE, the Plaintiff, SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased, demands judgment against the Defendant, MATIX, for damages together with interest, costs and trial by jury of all issues triable as of right by jury.

COUNT VI

Negligence of WILLIAM RUSSELL MATIX Resulting In Wrongful Death of Jerry Dove (MATIX)

85. This is an action for wrongful death of JERRY DOVE due to the negligence of WILLIAM RUSSELL MATIX and is brought forth by Plaintiff PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased.

86. That Paragraphs one through three, six, seven, fourteen, and fifteen

of this Complaint are realleged and incorporated herein as though fully set forth.

87. That on or about April 11, 1986, WILLIAM RUSSELL MATIX was operating a stolen black Monte Carlo automobile in Dade County, Florida. That MICHAEL LEE PLATT was a passenger in said automobile and carrying various firearms.

88. That at approximately 9:30 a.m., MATIX observed an unmarked FBI automobile with a flashing light and siren attempting to stop the Monte Carlo MATIX was driving.

89. That MATIX refused to stop the Monte Carlo voluntarily. While MATIX drove his automobile, PLATT was in the process of loading a firearm.

90. That once the automobile MATIX was driving was stopped by Special Agents of the Federal Bureau of Investigation, MICHAEL LEE PLATT proceeded to utilize a

firearm to shoot and kill Special Agent JERRY DOVE of the FBI.

91. That MATIX owed a duty to the decedent and other members of the public to exercise reasonable care in the use and operation of the automobile he was driving. Additionally, MATIX, knowing the propensity for violence of MICHAEL LEE PLATT, owed a duty to exercise reasonable care to the decedent and others to segregate and separate MICHAEL LEE PLATT and the weapons carried by PLATT from any and all locations and any and all situations in which PLATT might attempt to use said weapons against another human being. Defendant MATIX further had a duty to notify law enforcement authorities of the crimes committed by PLATT, PLATT's location, and PLATT's plans to commit further crimes.

92. That at all times material to this Complaint, MATIX was negligent and

careless and breached the previously described duties as follows:

(a) by negligently allowing MICHAEL LEE PLATT to travel with him in an automobile while MICHAEL LEE PLATT was fully armed;

(b) by not notifying law enforcement officials of the presence of MICHAEL LEE PLATT and his arsenal;

(c) by failing to stop when confronted by law enforcement authorities; and

(d) by allowing MICHAEL LEE PLATT to be driven to a location in which a confrontation with other persons would be likely and injury would likely occur.

93. As a direct, proximate and foreseeable result of the above alleged negligence, the wrongful death of JERRY DOVE occurred when MICHAEL LEE PLATT

utilized the firearms he carried in the automobile operated by WILLIAM RUSSELL MATIX to inflict the fatal wounds which caused the death of JERRY DOVE.

94. As a direct, proximate and foreseeable result of the above-described negligence which resulted in the death of JERRY DOVE, the Plaintiff, PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased, makes the following claims:

(A) The estate of JERRY DOVE:

1. Loss of the prospective net accumulations of the estate; and

2. Funeral expenses of the decedent JERRY DOVE's death.

(B) PATRICIA A. DOVE, surviving parent:

1. Future loss of support and services from the date of death into the future; and

2. Mental pain and suffering from the date of death into the future.

WHEREFORE, the Plaintiff, PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased, demands judgment against the Defendant MATIX, for damages together with interest, costs and trial by jury of all issues triable as of right by jury.

COUNT VII

Negligence of WILLIAM RUSSELL MATIX Resulting In Injury To Plaintiffs HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA, and RISNER

(MATIX)

95. This is an action for damages in excess of $5,000 due to the negligence of MATIX and is brought forth by Plaintiffs HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA, and RISNER.

96. That Paragraphs one through three and eight through fifteen of this

Complaint are realleged and incorporated herein as though fully set forth.

97. That on or about April 11, 1986, MATIX was operating a stolen black Monte Carlo automobile in Dade County, Florida. That MICHAEL LEE PLATT was a passenger in said automobile and carrying various firearms.

98. That at approximately 9:30 a.m., MATIX observed an unmarked FBI automobile with a flashing light and siren attempting to stop the Monte Carlo MATIX was driving.

99. That MATIX refused to stop the Monte Carlo voluntarily. While MATIX drove his automobile, PLATT was in the process of loading a firearm.

100. That once the automobile MATIX was driving was stopped by Special Agents of the Federal Bureau of Investigation, MICHAEL LEE PLATT proceeded to utilize a firearm to shoot at Special Agents

HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA, and RISNER of the FBI.

101. That MATIX owed a duty to the Plaintiffs and other members of the public to exercise reasonable care in the use and operation of the automobile he was driving. Additionally, MATIX, knowing the propensity for violence of MICHAEL LEE PLATT, owed a duty to exercise reasonable care to the Plaintiffs and others to segregate and separate MICHAEL LEE PLATT and the weapons carried by PLATT from any and all locations and any and all situations in which PLATT might attempt to use said weapons against another human being. MATIX further had a duty to notify law enforcement authorities of the crimes committed by PLATT, PLATT's location, and PLATT's plans to commit further crimes.

102. That at all times material to this Complaint, MATIX was negligent and

careless and breached the previously described duties as follows:

(a) by negligently allowing MICHAEL LEE PLATT to travel with him in an automobile while MICHAEL LEE PLATT was fully armed;

(b) by not notifying law enforcement officials of the presence of MICHAEL LEE PLATT and his arsenal of weapons;

(c) by failing to stop when confronted by law enforcement authorities; and

(d) by allowing MICHAEL LEE PLATT to be driven to a location in which a confrontation with other persons would be likely and injury would likely occur.

103. As a direct, proximate and foreseeable result of the above negligence, Plaintiffs HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA, and RISNER

were either shot and/or shot at when MICHAEL LEE PLATT utilized and fired the firearms he carried in the automobile operated by WILLIAM RUSSELL MATIX.

104. As a direct, proximate and foreseeable result of the above-described negligence which resulted in the battery and assault of Plaintiffs HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA, and RISNER, demand in excess of $5,000 for the physical injuries and pain and suffering and other damages as this Court sees fit to award.

WHEREFORE, the Plaintiffs, JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER, demand judgment against the Defendant MATIX, for damages together with interest, costs and trial by jury of all issues triable as of right by jury.

COUNT VIII

Assault and Battery of Defendants JOHN F. HANLON, JR., GORDON G. MCNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER (PLATT - MATIX)

105. This Count is made on behalf of Plaintiffs JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER, against Defendants PLATT and MATIX based upon assault and battery by PLATT and MATIX against each of the Plaintiffs. As to each of the Plaintiffs, this is an action in an amount in excess of $5,000.

106. Plaintiffs JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER, reallege paragraphs one through three and eight through twenty-eight of this Complaint as though fully set forth herein.

107. That once the stolen Monte Carlo automobile had come to a stopped

position Defendants PLATT and MATIX proceeded to shoot firearms at Special Agents of the FBI who were attempting to lawfully arrest PLATT and MATIX.

108. That PLATT and MATIX did each wilfully, knowingly, intentionally and maliciously shoot their firearms with the specific intent to cause injury to the Plaintiffs by means of gunshot wounds.

109. That the direct and proximate cause of the wilful, knowing, intentional and malicious shooting by PLATT and MATIX were gunshot wounds received by the Plaintiffs HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA, and RISNER, as well as other foreseeable injuries to Plaintiffs HANLON, McNEILL, MIRELES, MANAUZZI, ORRANTIA, and RISNER including but not limited to pain, physical handicap and mental suffering, both permanent and those continuing in the future.

WHEREFORE, Plaintiffs JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER, demand judgment against Defendants PLATT and MATIX and damages for the injuries received as a result of the intentional shooting and assault and other relief as the Court deems to be appropriate.

Respectfully submitted,

BRUCE A. ZIMET, P.A.
Suite 2000
One Financial Plaza
Ft. Lauderdale, Florida 33394
(Broward) 305-764-7081
(Dade) 305-945-0404

DATE: June 6, 1986

BRUCE A. ZIMET, ESQUIRE
(Fla. Bar #225053)

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-1224-Civ-HASTINGS

SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, et al.,

Plaintiffs,

vs. ORDER

BRENDA F. PLATT, as Personal Representative of the Estate of MICHAEL LEE PLATT and JANE DOE, as Personal Representative of the Estate of WILLIAM RUSSELL MATIX,

Defendants.

THIS CAUSE comes before the Court upon Defendant ESTATE OF WILLIAM RUSSEL MATIX's Motion to Dismiss the Complaint. Defendant BRENDA F. PLATT has filed an Answer to the Complaint.

This action is brought by surviving Special Agents of the Federal Bureau of Investigation and the Personal Representatives of the Estates of deceased agents GROGAN and DOVE, for injuries sustained as a result of a shoot-out with the deceased defendants on April 11, 1986.

Counts I and II are brought under 18 U.S.C. §1962 (civil RICO). The remaining counts are claims under state law for wrongful death, negligence, and assault and battery.

Defendant MATIX raises various grounds for dismissal. The Court finds the first ground meritorious and will dismiss the Complaint on that basis. The civil remedy for violation of the RICO statute provides in 18 U.S.C. §1964(c):

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damaged he sustains and the cost of the suit, including a reasonable attorneys' fees.

A plaintiff can only recover under this chapter if he has been injured in his business or property. Sedima S.P.R.L. v. Imrex, Co. Inc., ___ U.S. ___ 105, S.Ct. 3275, 3285-86 (1985). To this date no court has found that physical injury or death is included in the term

that are part of many personal injury claims. Cf. Von Bulow v. Von Bulow, 634 F.Supp. 1284, 1309 (S.D.N.Y. 1986). [8]

Finally, we do not agree that the construction of the Clayton Act permitting recovery for lost employment opportunities, Quinonez v. National Association of Securities Dealers, 540 F.2d 824, 828 (5th Cir. 1976), requires recovery in this case. We do not hold that plaintiffs may never recover under RICO for the loss of employment opportunities. We merely hold that the appellants cannot recover under RICO for those pecuniary losses that are most properly understood as part of a personal injury claim.

We are sympathetic to appellants' argument that permitting recovery in this case would help to deter the kind of activity that RICO was designed to

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8. We do not necessarily imply our approval of either the holding or any particular langauge in Von Bulow.

prevent. Nevertheless we must also ask whether appellants seek the kind of recovery that RICO was designed to afford. We can do no more than interpret the statute according to its plain language and as we believe Congress intended the language to be understood, and we do not understand Congress to have authorized recovery for these injuries. [9] If there is a defect in the statute, it "is inherent in the statute as written, and its correction must lie with Congress." Sedima, 105 S.Ct. at 3287.

Accordingly, the judgment of the district court is AFFIRMED.

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9. Appellants of course have a remedy in a state law action based on wrongful death, assault and battery, and negligence. The district court dismissed appellants' state law claims for lack of subject-matter jurisdiction but without prejudice to bring the claims in the proper forum.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-5299

D.C. Docket No. 86-1224

SANDRA S. GROGAN, et al.,

Plaintiffs-Appellants,

versus

BRENDA F. PLATT,

Defendant,

JANE DOE, As Personal Representative of the Estate of William Russell Matix, Deceased,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

Before KRAVITCH and CLARK, Circuit Judges, and ESCHBACH*, Senior Circuit Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiffs-appellants pay to defendant-appellee, the costs on appeal to be taxed by the Clerk of this Court.

---

*Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

Entered: January 15, 1988
For the Court: Miguel J. Cortez, Clerk

By: _____
Deputy Clerk

ISSUED AS MANDATE: Aug 04 1988

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-5299

SANDRA S. GROGAN, et al.,

Plaintiffs-Appellants,

versus

BRENDA F. PLATT,

Defendant,

JANE DOE, as Personal Representative of the Estate of William Russell Matix, Deceased,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

---

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING IN BANC

(Opinion January 15, 1988, 11 Cir., 1988, ___ F.2d ___).

(July 15, 1988)

Before KRAVITCH and CLARK, Circuit Judges, and ESCHBACH*, Senior Circuit Judge.

PER CURIAM:

(x) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause in banc,

and a majority of the judges in active service not having voted in favor of it, Rehearing In Banc is DENIED.

ENTERED FOR THE COURT:

_____

United States Circuit Judge

*Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

losses, such as loss of earnings, and non-pecuniary injuries, such as mental anguish and pain and suffering. See generally Restatement (Second) of Torts §905, §924(1979).

Our task, however, is not to decide whether the economic aspects of damages resulting directly from personal injuries could, as a theoretical matter, be considered injury to "business or property," but rather to determine whether Congress intended the damages that plaintiffs seek in this case to be recoverable under civil RICO. Relying on the assumption that Congress intends the ordinary meanings of the words it employs, see, e.g., Escondido Mutual Water Co. v. La Jolla Band of Mission Indians, 466 U.S. 765, 772, 104 S.Ct. 2105, 2110, 80 L.Ed.2d 753 (1984), appellants argue that a common-sense interpretation of the words "business or property" includes the economic damages that result from injury

to the person. We are not convinced that appellants' contention accurately captures the ordinary meaning of those words. In our view, the ordinary meaning of the phrase "injured in his business or property" excludes personal injuries, including the pecuniary losses therefrom. As a panel of the Second Circuit remarked, "[t]he requirement that the injury be to the plaintiff's business or property means that the plaintiff must show a proprietary type of damage. For example, a person physically injured in a fire whose origin was arson is not given a right to recover for his personal injuries; damage to his business or his building is the type of injury for which §1964(c) permits suit." Bankers Trust Co. v. Rhoades, 741 F.2d 511, 515 (2d Cir. 1984)(dictum), vacated on other grounds, 473 U.S. 922, 105 S.Ct. 3550, 87 L.Ed.2d 673 (1985); see also Webster's Third New International Dictionary, 1818

(1986)(defining "property," inter alia, as "something that is or may be owned or possessed: wealth, goods.... something to which a person has legal title").

Moreover, the pecuniary and non-pecuniary aspects of personal injury claims are not so separated as the appellants would have us accept; rather, loss of earnings, loss of consortium, loss of guidance, mental anguish, and pain and suffering are often to be found, intertwined, in the same claim for relief. We agree that "[h]ad Congress intended to create a federal treble damages remedy for cases involving bodily injury, injury to reputation, mental or emotional anguish, or the like, all of which will cause some financial loss, it could have enacted a statute referring to injury generally, without any restrictive language." Morrison v. Syntex Laboratories, 101 F.R.D. 743, 744 (D.D.C.1984)-(emphasis added).

We do not deny that recovery for personal injury has pecuniary aspects. The Jones Act, for example, permits recovery for "personal injury" suffered by a seaman in the course of his employment and for "death ... as a result of any such personal injury," 46 U.S.C. §688(a), yet the Jones Act also limits recovery to pecuniary damages. Ivy v. Security Barge Lines, 606 F.2d 524 (5th Cir. 1979)(en banc), cert. denied, 446 U.S. 956, 100 S.Ct. 2927, 64 L.Ed.2d 815 (1980). [6] Similarly limited is recovery under the Death on the High Seas Act, see Mobile Oil Corp. v. Higginbotham, 436 U.S. 618, 98 S.Ct. 2010, 56 L.Ed.2d 581 (1978), although the survival provision of that statute refers to the death of the plaintiff "during the pendency ... of

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6. The Eleventh Circuit, in the in banc decision Bonner v. City of Pritchard, 661 F.2d 1206, 1209 (11th cir. 1981), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

a suit to recover damages for personal injuries." 46 U.S.C. §765. Rather than convince us that the pecuniary losses that are part of personal injuries constitute injury to "business and property," however, these statutes and cases suggest that pecuniary losses are so fundamentally a part of personal injuries that they should be considered something other than injury to "business or property."

Furthermore, as several courts have noted, RICO's civil action provision was modeled on that of the Clayton Act, which contains similar language. E.g., Campbell v. A.H. Robins Co., 615 F.Supp. 496, 501 (D.Wis.1985); Cuzzupe v. Paparone Realty Co., 596 F.Supp. 988, 991 (D.N.J.1984). The Supreme Court has indicated that personal injuries lie outside the scope of recovery permitted by the Clayton Act. See Reiter, 442 U.S.

at 339, 99 S.Ct. at 2331.[7] We understand the perils in relying too closely on the analogy of the antitrust laws, which serve a purpose entirely different from that of RICO. See Haroco, Inc. v. American National Bank & Trust Co., 747 F.2d 384, 391 n. 8 (7th Cir. 1984), aff'd, 473 U.S. 606, 105 S.Ct. 3291, 87 L.Ed.2d 437(1985); Note, Civil RICO: The Temptation and Impropriety of Judicial Restriction, 95 Harv.L.Rev. 1101, 1111-14 (1982). In this case, however, we do not

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7. Appellants argue that the exclusion of personal injuries from the scope of recovery permitted by the Clayton Act results from the concepts of "direct injury" and "antitrust injury" required for recovery under the antitrust laws. See Brunswick Corp. v. Pueblo Bowl-O-Mat, 429 U.S. 477, 489, 97 S.Ct. 690, 697, 50 L.Ed.2d 701 (1977); Hamman v. United States, 267 F.Supp. 420, 432 (D.Mont.1967). Appellants may well be correct that these requirements would lead to the preclusion of personal injury recovery, but the Reiter Court clearly was relying on principles of statutory construction when it indicated that personal injuries lay outside the scope of injury to "business or property."

face, as did the courts in Sedima and Haroco, the question of whether the general purpose of RICO warrants the creation of standing requirements that are not apparent from the face of the statute, but whether the plain language of the statute, which was modeled on the Clayton Act, authorizes recovery of a particular category of damages.

Appellants urge that to hold the pecuniary aspects of personal injury losses nonrecoverable under RICO would amount to rewriting the statute, because any recovery for racketeering activity based on murder would be precluded. See 18 U.S.C. §1961(1)(A) ("racketeering activity" includes "any act or threat involving murder"). We disagree. Without ruling on hypothetical cases, we can conceive of injuries resulting from murder for which recovery would be possible that do not involve issues such as loss of earnings and loss of support

County. On the morning of April 11, 1986, FBI Agents Benjamin Grogan and Jerry Dove observed Michael Lee Platt and William Russell Matix driving an automobile resembling one involved in a previous bank robbery and believed stolen from a person who had been shot and abandoned in a rockpit. Realizing that Grogan and Dove were following them, Platt and Matix attempted to flee in the stolen car. Grogan and Dove sounded their sirens and gave chase; six other FBI Agents followed in pursuit. A gun battle erupted in which Agents Grogan and Dove were killed and Agents John Hanlon, Gordon McNeill, Edmundo Mireles, Richard Manauzzi and Gilbert Orrantia were injured. Agent Ronald Risner apparently escaped without gunshot wounds.

The six FBI Agents who escaped death and the estates of the two slain agents filed a complaint seeking damages under

the civil action provision of RICO, 18 U.S.C. §1964(c), as well as under Florida law of wrongful death, assault and battery, and negligence. The estate of Matix moved to dismiss the complaint for failure to state a claim. It argued that the complaint sought damages for personal injuries that were not recoverable under civil RICO. Matix's estate also contended that the complaint failed to allege the existence of an enterprise, failed to allege an overt act in furtherance of a conspiracy to violate RICO, and attempted to state a claim that had not survived the death of Matix. The district court reasoned that under RICO, "a plaintiff can only recover ... if he has been injured in his business and property.... To this date no court has found that physical injury or death is included in the term 'business or property.'" The court thus dismissed the complaint for failure to state an injury

to business or property and did not reach the defendant's other arguments. [3]

II.

The background and purpose of RICO as a flexible tool in fighting organized crime are well known to the federal courts. As well known are the imaginative ways in which civil plaintiffs, attracted by RICO's provision for treble damages and attorney's fees, [4] have used this flexibility to their advantage. The Supreme Court has noted that "in its private civil version, RICO is evolving into something quite different from the original conception of tis enactors." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S.Ct. 3275, 3287, 87 L.Ed.2d 346 (1985). In Sedima and its companion cases, the Supreme Court disapproved

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3. The district court also dismissed the action against Platt's estate, which had answered the complaint.

4. See 18 U.S.C. §1964(c).

several methods by which the courts of appeals had attempted to restrict the reach of civil RICO. The Court instructed as follows:

> Where the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise. Those acts are, when committed in the circumstances delineated in §1962(c), "an activity which RICO was designed to deter." Any recoverable damages occurring by reason of a violation of §1962(c) will flow from the commission of the predicate acts.

Sedima, 105 S.Ct. at 3286. As the quotation indicates, however, some limits on civil RICO still exist, for only recoverable damages will flow from the commission of the predicate acts. RICO provides that "[a] person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor." 18 U.S.C. §1964(c)

(emphasis added); see Sedima, 105 S.Ct. at 3285-86 ("In addition, the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation"). The words "business or property" are, in part, words of limitation; if Congress had intended for the victims of predicate acts to recover for all types of injuries suffered, it would have drafted the statute to read: "A person injured by reason of a violation of a section 1962 of this chapter may sue therefor...." Cf. Reiter v. Sonotone Corp., 442 U.S. 330, 339, 99 S.Ct. 2326, 2331, 60 L.Ed.2d 931 (1979)(words in Clayton Act indentical to civil RICO preclude recovery for personal injuries)(dictum); Urie v. Thompson, 337 U.S. 163, 180-82, 69 S.Ct. 1018, 1029-1031, 93 L.Ed. 1282 (1949)(in provision of Federal Employers' Liability Act permitting recovery by "any person

suffering injury while he is employed," Congress did not intend to limit recovery to injury by accident and exclude recovery for diseases). We are obliged to give effect, if possible, to every word used by Congress. Reiter, 442 U.S. at 339, 99 S.Ct. at 2331.

The appellants do not dispute that some aspects of damages normally recoverable for personal injuries, such as mental anguish, fall outside the rubric of "business or property." Nonetheless, they urge that persons who are killed or injured by RICO predicate acts suffer real economic consequences as a result, and these economic consequences fall within the category of injury to "business or property." This argument has some merit. For example, statutes permitting recovery for wrongful death are sometimes described as having the purpose of compensating survivors for their pecuniary loss resulting from the

death of their source of support,[5] see Restatement (Second) of Torts §925 comment a (1979); W. Keeton, Prosser and Keeton on Torts 949 (5th ed. 1984); 1 S. Speiser, Recovery for Wrongful Death §3.1 (2d ed. 1975); 22 Am.Jr.2d Death §12, §17 (1965) (citing cases describing wrongful death action as one for injury to property), although the compensatory character of wrongful death actions has been diluted significantly as the states have begun to permit recovery for non-economic aspects of wrongful death, such as loss of companionship and survivors' mental anguish. See e.g., Fla.Stat.Ann. §768.21 (West 1986). In a negligence action based on injuries to the person not resulting in death, plaintiffs commonly seek compensation for both pecuniary

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5. Alabama's statute is a notable exception. See Airheart v. Green, 267 Ala. 689, 104 So.2d 687, 609 (1958) (describing damages recoverable under Homicide Act as "entirely punitive").

"business or property." On the contrary, courts have held that "personal injuries are clearly not injuries to business or property within the context of this statute." Campell v. A.H. Robins Co., 615 F.Supp. 496, 501 (D.S.Wis. 1985); Cuzzupe v. Paparone Realty Co., 596 F.Supp. 988, 991 (D.N.J. 1984)(mental suffering and physical injury are not compensable under the civil RICO statute).

The Supreme Court has construed the identical "business or property" language under the Clayton (anti-trust) Act in Reiter v. Sonotone, 442 U.S. 330, 99 S.Ct. 2326, 2331 (1979) and found:

> The phrase 'business or property' also retains restrictive significance. It would, for example, exclude personal injuries suffered. (Emphasis added) (Citations omitted). Congress must have intended to exclude some class of injuries by the phrase 'business or property'.

This Court cannot stretch the plain meaning of the statute to encompass the

death and personal injuries resulting from the tragic events of April 11, 1986. To hold otherwise would rob Congress's restrictive modification of the term "injured" of any meaning. Since the statute relied on provides no relief for Plaintiffs' injuries this Court has no subject matter jurisdiction over the federal claims nor pendent jurisdiction over the state counts. Accordingly, the Court will dismiss the entire Complaint against both defendants.

It is hereby

ORDERED and ADJUDGED that Defendant MATIX' Motion to Dismiss is GRANTED and the Complaint is DISMISSED WITHOUT PREJUDICE to Plaintiffs' right to bring the state law claims in the proper forum.

DONE and ORDERED this 13 day of November, 1986.

_____

ALCEE L. HASTINGS
UNITED STATES DISTRICT JUDGE

Copies to:
Bruce Zimet
Ronald Ponzoli
Carolina Echarte

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-1224-Civ-HASTINGS

SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased, et al.,

Plaintiffs,

- vs -

JANE DOE, as Personal Representaive of the Estate of WILLIAM RUSSELL MATIX, Deceased, et al.,

Defendants.

O R D E R

THIS CAUSE having come before the Court on Plaintiffs' Motion for Reconsideration of this Court's Order of November 13, 1986, Granting Defendant Matix' Motion to Dismiss Complaint, and upon due consideration thereof, it is hereby

ORDERED and ADJUDGED that Plaintiffs' Motion for Reconsideration is DENIED.

DONE and ORDERED this 23 day of March, 1987, at Miami, Florida.

_____
UNITED STATES DISTRICT JUDGE

cc: Bruce A. Zimet, Esquire
Ronald Ponzoli, Esquire

Sandra S. GROGAN, et al.,
Plaintiffs-Appellants,

v.

Brenda F. PLATT, Defendant,

Jane Doe, As Personal Representative of the Estate of William Russell Matix, Deceased, Defendant-Appellee.

No. 87-5299.

United States Court of Appeals,
Eleventh Circuit.

Jan. 15, 1988.

Appeal from the United States District Court for the Southern District of Florida.

Before KRAVITCH and CLARK, Circuit Judges, and ESCHBACH*, Senior Circuit Judge.

KRAVITCH, Circuit Judge:

We consider in this case another of the myriad issues of statutory interpretation presented by the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968: Does RICO's private civil action provision,

18 U.S.C. §1964(c), [1] permit recovery for the economic aspects of personal injuries inflicted by predicate acts involving murder? [2]

I.

In early 1986, the FBI began an investigation of a series of robberies, extortions, and attempted murders committed in Dade County, Florida. The FBI learned that this criminal activity was tied to a plan to steal large quantities of money when that money was being delivered to locations in southwest Dade

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1. 18 U.S.C. §1964(c) provides, "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover three fold the damages he sustains and the cost of the suit, including a reasonable attorney's fee."

2. Only one other court of appeals has considered this issue and has concluded, without lengthy discussion, that the answer is "no." Drake v. B.F. Goodrich Co., 782 F.2d 638, 644 (6th Cir. 1986).

FILED
NOV 10 1988
JOSEPH F. SPANIOL, JR.

CASE NO: 88-650

In the Supreme Court of the United States

OCTOBER TERM, 1988

SANDRA S. GROGAN, as Personal Representative of the Estate of BENJAMIN GROGAN, Deceased, PATRICIA A. DOVE, as Personal Representative of the Estate of JERRY DOVE, Deceased, JOHN F. HANLON, JR., GORDON G. McNEILL, EDMUNDO MIRELES, JR., RICHARD A. MANAUZZI, GILBERT M. ORRANTIA, and RONALD G. RISNER,

Petitioners,

vs.

BRENDA F. PLATT, as Personal Representative of the Estate of MICHAEL LEE PLATT, Deceased, and JANE DOE, as Personal Representative of the Estate of WILLIAM RUSSELL MATIX, Deceased,

Respondents.

On Petition For Writ of Certiorari to the United States Court of Appeals, Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Ronald P. Ponzoli, Esquire
PONZOLI & WASSENBERG, P.A.
302 Roland/Continental Plaza
3250 Mary Street
Miami, Florida 33133
Tel: (305) 442-1654

Counsel for Respondent, Jane Doe, as Personal Representative of the Estate of William Russell Matix, deceased

QUESTION PRESENTED FOR REVIEW

1. Whether Congress intended the phrase "injured in his business or property" to include pecuniary losses consequential to personal injuries within the ambit of Civil RICO.

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OTHER AUTHORITIES CITED	
15 U.S.C. §15	2
18 U.S.C. §1964(c)	2
116 Cong.Rec. 36296 (1979)	4, 5

CITATION TO OPINION BELOW

The opinion below appears as *Grogan v. Platt* 835, F.2d 845 (11th Cir. 1988).

STATEMENT OF THE CASE

Respondent accepts the Petitioners' Statement of the Case and of the Facts, with the qualification that the matters set forth in Petitioners' Statement of the Facts are not established facts but are only allegations set forth in Petitioners' Complaint. Because the matter was before the District Court on Respondents' Motion to Dismiss, Respondent recognizes that the allegations in the Complaint must be taken as true for purposes of this Petition.

ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This Court should deny the Petition for Writ of Certiorari because the decision of the Eleventh Circuit is in complete accord with Congress' intent in enacting the Civil RICO provisions, with decisions of this Court, and with decisions of other Federal Courts of Appeal.

The RICO Statute provides a civil remedy only to a person ". . .injured in this business or property. . ." 18 U.S.C. §1964(c). RICO's civil damage provision is patterned after the civil damage provisions of the antitrust laws, and the "business or property" language is identical to the language found in the Clayton Act, 15 U.S.C §15. The Supreme Court in *Reiter v. Sonotone Corp.*, 442 U.S. 340, 99 S.Ct. 2326, 60 L.Ed.2d. 931 (1979) interpreting the antitrust counterpart, concluded that Congress must have intended to exclude some class of injuries by the phrase "business or property," stating:

> The phrase "business or property" also retains restrictive significance. It would, for example, exclude personal injuries suffered. 442 U.S. at 339, 99 S.Ct. at 2331.

Although the "business or property" language was not at issue in *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d. 346 (1985), Justice Marshall, dissenting, discussed the "business or property" language and found that the exclusion for damages flowing from personal injury is equally applicable under the RICO statute. He stated:

> In addition, the statute permits recovery only for injury to business or property. It therefore excludes recovery for personal injuries. *Id.* at 3297.

The Plaintiffs' contention is identical to the contention asserted, and rejected, in *Drake v. B. F. Goodrich Co.*, 782 F.2d. 638 (6th Cir. 1986). In *Drake*, as in the instant case, injured plaintiffs and personal representatives of deceased plaintiffs attempted to state a claim under civil RICO for pecuniary injury resulting from personal injury and wrongful death allegedly caused by a violation of RICO's substantive provisions. The plaintiffs contended that a cause of action should be granted to anyone suffering pecuniary injury as a direct result of a violation of RICO's substantive provisions. In denying this contention, the Court stated:

> We find that RICO is inapplicable to the instant case because the injuries complained of are not within the ambit of the statute. *Id.* at 644.

See also *Campbell v. A. H. Robbins Co.*, 615 F.Supp. 496, 501 (D.C.Wis. 1985), and *Cuzzupe v. Paparone Realty Co.*, 596 F.Supp. 988, 991 (D.N.J. 1984).

Petitioners do not cite a single decision from any court wherein a civil RICO claim was permitted as a result of damages, pecuniary or otherwise, consequential to personal injury or wrongful death caused by a RICO predicate act. None of the decisions cited by Petitioners interpreting either the antitrust statutes or RICO statutes involve damages incurred as a result of personal injuries.

The gist of the Petitioners' argument is the misconception that Congress must have intended to include personal injuries within the ambit of civil RICO because Congress included murder and attempted murder as predicate acts. But as the Eleventh Circuit pointed out below, there are numerous situations where injuries resulting from murder or attempted murder would be compensable under civil RICO without being part of a personal injury claim. One need not look beyond the legislative history for an example of a compensable civil RICO stemming from the predicate act of murder. Speaking before the Senate on October 12, 1970 prior to final passage of the RICO legislation, Senator Dole gave the following example of the type of the damages Congress intended to guard against by including murder as a predicate act:

> The techniques and methods used in the infiltration of legitimate business enterprises are many and varied. A few case histories will demonstrate how easily a business can fall captive.
>
> The New York Times edition of June 29, 1969, reported how a New Jersey organized crime leader, Gene Catena, gained a foothold in a detergent manufacturer's business, North America Chemical Corp., of Patterson, N.J., by serving as a sales consultant. According to testimony released by the New York Harbor and Waterfront Commission, the owner of the detergent manufacturing company hired Catena's sales agency, called Best Sales, in

> 1964 under a 10-year contract which was not subject to cancellation. Catena and Best Sales thereafter, through the medium of arson and murder, attempted to force the A.&P. Tea Co., to buy a detergent that the company had previously tested and rejected. 116 Cong.Rec. 36296 (1970).

One need not "strain the sensibilities" to recognize that the target of Congress was the use of murder as a coercive medium. Congress in no way intended to federalize ordinary state remedies relating to personal injury and Plaintiffs cite nothing in the legislative history to indicate otherwise. The affirmance of the District Court's dismissal of the Complaint is entirely consistant with the legislative history of the RICO statute, the plain wording chosen by Congress, and the caselaw interpreting the civil damage provision.

CONCLUSION

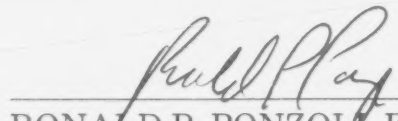
Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

RONALD P. PONZOLI, ESQUIRE

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that true and correct copies of the foregoing have been mailed, postage prepaid, this 10th day of November, 1988, to Bruce A. Zimet, Esquire, One Financial Plaza, Suite 2612, Fort Lauderdale, Florida 33394 and Carolina A. Echarte, Esquire, Buchbinder, 4th Floor, 46 Southwest First Street, Miami, Florida 33130.



RONALD P. PONZOLI, ESQUIRE